

**United States Department of Labor
Employees' Compensation Appeals Board**

R.H., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE
Detroit, MI, Employer**

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**Docket No. 11-2082
Issued: May 18, 2012**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 23, 2011 appellant, through her attorney, filed a timely appeal of an August 29, 2011 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Because more than 180 days elapsed between the most recent merit decision of July 26, 2010 to the filing of this appeal, the Board lacks jurisdiction to review the merits of appellant's claim pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3.

ISSUE

The issue is whether OWCP properly refused to reopen appellant's case for further review of the merits of her claim under 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On July 28, 2003 appellant, then a 45-year-old letter carrier, filed a traumatic injury claim alleging that on June 17, 2002 she sustained tendinitis in her left wrist. She indicated that she

¹ 5 U.S.C. § 8101 *et seq.*

repetitively lifted tubs of mail in the performance of duty.² On June 16, 2005 OWCP accepted appellant's claim for tenosynovitis of the left hand and wrist.

On October 22, 2009 appellant filed a Form CA-7, claim for wage loss due to lost work hours beginning October 10, 2009. The employing establishment indicated that appellant was in the National Reassessment Process (NRP) and no work was available.

In a January 22, 2010 decision, OWCP denied appellant's claim for compensation for partial days of leave without pay commencing October 10, 2009 and continuing. It found that the medical evidence was insufficient to establish that appellant's claimed disability for work was due to the accepted work injury. On February 19, 2010 appellant requested a hearing, which was held on May 10, 2010. During the hearing, arguments were submitted which included that appellant's work hours were reduced from full time to less than three hours per day as a result of the NRP. It was also suggested that this was a withdrawal of light duty and appellant was entitled to wage-loss compensation.

In a February 19, 2010 report, Dr. Ephraim Zinberg, a Board-certified orthopedic surgeon and treating physician, noted appellant's history of injury and treatment. He determined that appellant had symptoms consistent with carpal tunnel syndrome. Dr. Zinberg opined that it was "difficult to determine whether this is related directly to her injury of 2001 or 2002. There were no reports prior to 2007 indicating that she had carpal tunnel syndrome." Dr. Zinberg recommended a repeat electromyography (EMG) scan and nerve conduction study (NCS). He also indicated that appellant may want to consider left carpal tunnel release surgery.

In a July 26, 2010 decision, a hearing representative affirmed the January 22, 2010 decision. She found that the work stoppage imposed by the employing establishment did not establish a recurrence of disability as it was analogous to a reduction-in-force and applied to employees regardless of whether they were full duty or light duty. Additionally, the medical evidence was insufficient to establish that appellant's inability or disability for work was causally related to the accepted injury. OWCP further found that there was no evidence that the employing establishment improperly withdrew her light-duty assignment.

On February 8, 2011 appellant's representative filed an appeal with the Board. However, the Board issued an order dismissing appeal on June 17, 2011 finding that the application for review was untimely filed such that it had no jurisdiction to consider the appeal.³

In a letter dated June 2, 2011, appellant's union representative requested reconsideration of the July 26, 2010 decision. He alleged that her absence from work was due to the lack of available work. Appellant's union representative argued that appellant was incorrectly categorized as a part-time flexible employee. Furthermore, he alleged that the NRP process clearly and blatantly targeted employees with compensable injuries. Appellant's union

² Appellant alleged that she had a previous fracture to her left wrist. The record reflects that she was on restricted duty for a left wrist fracture sustained on April 9, 2001. Appellant was working restricted duty since March 22, 1977. She continued working limited duty after her June 17, 2002 injury.

³ Docket No. 11-774 (issued June 17, 2011).

representative alleged that appellant's claim was incorrectly denied based on the application that it was a reduction in her work hours to avoid the category of a recurrence.

In a letter dated July 21, 2011, appellant's counsel requested reconsideration. In support of the request, he submitted a July 15, 2011 report from Dr. Zinberg who noted that he diagnosed de Quervain's tenosynovitis and carpal tunnel syndrome in the left side. Dr. Zinberg explained that the carpal tunnel syndrome was severe with significant loss of sensation and surgery was recommended. He opined that the carpal tunnel syndrome was the result of the fracture of the left wrist that was sustained at work on April 9, 2001 which required surgery. Dr. Zinberg noted that it was "common to develop carpal tunnel syndrome at times on a delayed basis, after a fracture of the radius, especially that which requires surgery." He indicated that appellant was on work restrictions of delivering mail for two hours per day and collecting business mail two hours per day, which should continue.

By decision dated August 29, 2011, OWCP denied appellant's request for reconsideration without a review of the merits on the grounds that her request was insufficient to warrant review of its prior decision.

LEGAL PRECEDENT

Under section 8128(a) of FECA,⁴ OWCP may reopen a case for review on the merits in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations, which provides that a claimant may obtain review of the merits if the written application for reconsideration, including all supporting documents, sets forth arguments and contains evidence that:

"(i) Shows that OWCP erroneously applied or interpreted a specific point of law;
or

"(ii) Advances a relevant legal argument not previously considered by OWCP; or

"(iii) Constitutes relevant and pertinent new evidence not previously considered by OWCP."⁵

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by OWCP without review of the merits of the claim.⁶

ANALYSIS

In the instant case, appellant disagreed with the denial of her claim for compensation commencing October 10, 2009 and requested reconsideration.

⁴ 5 U.S.C. § 8128(a).

⁵ 20 C.F.R. § 10.606(b).

⁶ *Id.* at § 10.608(b).

The underlying issue is primarily medical in nature, whether appellant was disabled for partial days of leave without pay commencing October 10, 2009 and continuing as a result of her accepted employment injury. However, appellant did not provide any relevant or pertinent new evidence to the issue of whether she was disabled during these time frames due to her accepted employment-related conditions.

Appellant's counsel submitted a new report from Dr. Zinberg and requested that the previous decision be vacated. In a report dated July 15, 2011, he opined that it was "common to develop carpal tunnel syndrome at times on a delayed basis, after a fracture of the radius, especially that which requires surgery." Dr. Zinberg noted that appellant had work restrictions of delivering mail for two hours per day and collecting business mail two hours per day, which should continue. However, this report is not relevant as he did not provide any opinion regarding whether her employment caused any disability for any period of time commencing October 10, 2009 and continuing as a result of her accepted June 17, 2002 work injury. Thus, this report is not relevant and is insufficient to require OWCP to reopen appellant's case for further review of the merits. The submission of evidence that does not address the particular issue involved does not constitute a basis for reopening a case.⁷ Appellant did not provide any other new medical evidence that addressed whether any disability beginning October 10, 2009 was due to the June 17, 2002 work injury.

Additionally, the arguments from appellant's union representative pertaining to appellant's light-duty position were previously presented to OWCP's hearing representative and considered by OWCP. The submission of evidence or argument which repeats or duplicates evidence that is already in the case record does not constitute a basis for reopening a case for merit review.⁸ Thus, these assertions do not show that OWCP erroneously applied or interpreted a specific point of law and do not advance a relevant legal argument not previously considered by OWCP.

Consequently, the evidence and argument submitted by appellant on reconsideration do not satisfy any of the three regulatory criteria for reopening a claim for merit review. Therefore, OWCP properly denied her request for reconsideration.

CONCLUSION

The Board finds that OWCP properly refused to reopen appellant's case for further review of the merits of his claim under 5 U.S.C. § 8128(a).

⁷ *Alan G. Williams*, 52 ECAB 180 (2000); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000); *Robert P. Mitchell*, 52 ECAB 116 (2000).

⁸ *C.N.*, Docket No. 08-1569 (issued December 9, 2008); *Khambandith Vorapanya*, 50 ECAB 490 (1999); *John Polito*, 50 ECAB 347 (1999); *David J. McDonald*, 50 ECAB 185 (1998).

ORDER

IT IS HEREBY ORDERED THAT the August 29, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 18, 2012
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board